

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHNNY W. BOYDE,

Plaintiff,

-against-

5:16-cv-0555 (LEK/TWD)

NEW YORK STATE, *et al.*,

Defendants.

ORDER

This matter comes before the Court following a Report-Recommendation filed on May 19, 2016, by the Honorable Thérèse Wiley Dancks, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 5 (“Report-Recommendation”).

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” FED. R. CIV. P. 72(b); L.R. 72.1(c). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Barnes v. Prack, No. 11-CV-0857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); Farid v. Bouey, 554 F. Supp. 2d 301, 306-07, 306 n.2 (N.D.N.Y. 2008); see also Machicote v. Ercole, No. 06 Civ. 13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C.

§ 636(b).

No objections were filed in the allotted time period. See Docket. Plaintiff's filing on May 27, 2016, in response to the Report-Recommendation, styled as Objections, appears to instead constitute a proposed amended complaint. Dkt. No. 7. As the Court has reviewed the Report-Recommendation for clear error and has found none, the Court adopts the Report-Recommendation in full. Plaintiff's Complaint is therefore dismissed without prejudice. Since Plaintiff has submitted a Proposed Amended Complaint, this is accepted as the operative pleading in this action and referred to Judge Dancks for initial review.

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 5) is **APPROVED and ADOPTED in its entirety**; and it is further

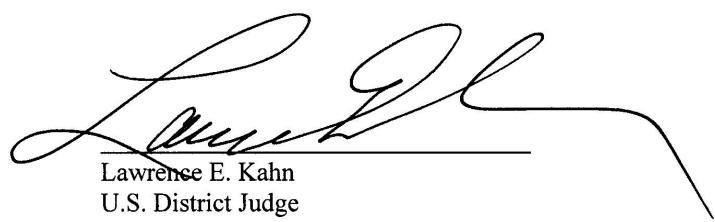
ORDERED, that the Complaint (Dkt. No. 1) is **DISMISSED without prejudice** for failure to state a claim under 28 U.S.C. § 1915(e)(2); and it is further

ORDERED, that the Clerk of the Court forward the Proposed Amended Complaint (Dkt. No. 7) to U.S. Magistrate Judge Thérèse Wiley Dancks for initial review; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on Plaintiff.

IT IS SO ORDERED.

DATED: June 28, 2016
Albany, NY



Lawrence E. Kahn
U.S. District Judge